

DEPARTMENT OF STATE REVENUE

**LETTER OF FINDINGS NUMBER: 94-0011 CSET
Controlled Substance Excise Tax
For Tax Periods: 1993**

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ISSUE

1. CONTROLLED SUBSTANCE EXCISE TAX: IMPOSITION

Authority: IC 6-7-3-5

Taxpayer protests the assessment of Controlled Substance Excise Tax.

2. CONTROLLED SUBSTANCE EXCISE TAX: DOUBLE JEOPARDY

Authority: Bryant v. State, 660 N.E.2d 290 (Ind. 1995), cert. Denied, 136 L.Ed. 2d 213, 117 S.Ct. 293 (1996).

STATEMENT OF FACTS

Taxpayer was arrested for possession of marijuana on December 13, 1993. The Indiana Department of Revenue issued a record of Jeopardy Finding, Jeopardy Assessment Notice and Demand on December 15, 1993 in a base tax amount of \$28,296.00. Taxpayer filed a timely protest to the assessment. A hearing on the protest was scheduled for 10:00 a.m. on February 12, 1999. Taxpayer filed documents to be considered at the hearing, but he did not appear or telephone at the time of the hearing. Further facts will be provided as necessary.

1. Controlled Substance Excise Tax-Imposition

DISCUSSION

IC 6-7-3-5 imposes the Controlled Substance Excise Tax on the possession of marijuana in the State of Indiana. A police statement and the lab report indicate that Taxpayer was in possession of marijuana. Taxpayer pled guilty to the cultivation of marijuana. Therefore, the tax properly applies to Taxpayer in this situation.

FINDING

Taxpayer's protest is denied.

3. Controlled Substance Excise Tax-Double Jeopardy

DISCUSSION

Taxpayer's second point of protest concerns the United States Constitution's 5th Amendment protection against double jeopardy. Bryant v. State, 660 N.E.2d 290 (Ind. 1995), cert. Denied, 136 L.Ed. 2d 213, 117 S.Ct. 293 (1996), discusses when jeopardy attaches in the criminal matter of possession and cultivation of marijuana and in the civil matter of controlled substance excise tax. The Court held that the criminal jeopardy attaches when the Defendant is first put at risk of punishment. In this case, Defendant was first put at risk of punishment when he pled guilty to cultivation of marijuana on December 15, 1994. The Court further held that controlled substance excise tax jeopardy attaches when the Department issues a "Record of Jeopardy Finding, Jeopardy Assessment Notice and Demand." In this case, the Department issued that Jeopardy Assessment on December 15, 1993. Clearly the Department's issuance of the Jeopardy Assessment on December 15, 1993 was the first jeopardy since it preceded the guilty plea on December 15, 1994. The Indiana Department of Revenue did not violate Taxpayer's constitutional protection against double jeopardy in this case.

FINDING

This point of Taxpayer's protest is denied.